

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 14214US02)

In the Application of:

Martin Lund

Electronically Filed on January 4, 2010

Serial No. 10/665,648

Filed: September 19, 2003

For: METHOD AND SYSTEM TO
PROVIDE BLADE SERVER
LOAD BALANCING USING
SPARE LINK BANDWIDTH

Examiner: Man U. Phan

Group Art Unit: 2475

Confirmation No. 6075

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant requests review of the final rejection in the above-identified application, stated in the final Office Action mailed on October 19, 2009 (Final Office Action) with a period of reply through January 19, 2010. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

REMARKS / ARGUMENTS

Claims 1-25 are pending in the instant application. Claims 1 and 13 are independent. Claims 1-3, 12-15 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 6,810,018 ("Paranchych") in view of USP 7,443,867 ("Hsu"). Claims 4-11, 16-22 and 24-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Paranchych in view of Hsu, and further in view of USP 7,032,037

("Garnett"). The Applicant respectfully traverses these rejections at least based on the following remarks.

I. Examiner's Response to Arguments in the Final Office Action

The Applicant maintains that the combination of Paranchych and Hsu does not disclose or suggest **"a server including a blade server manager, two or more blade servers, and a common backplane,"** as recited in Applicant's claim 13.

In the 9/28/09 response (see pages 12-14), the Applicant argued that neither Paranchych nor Hsu, both individually and in combination, seems to be relevant art in the rejection of Applicant's claim 13. For example, the Examiner equates Paranchych's entire CDMA wireless network system 10 to Applicant's multi-server platform. More specifically, **the Examiner merely made conclusory statements to allege without citing for support in Paranchych**, that Paranchych's access terminal AT 20 and the access point AP 20a use Applicant's respective "blade server manager" and "blade server". In fact, the Applicant pointed out that in the entire Paranchych reference, there is no mentioning of "server", let alone any discussion of a **"blade server manager" or "two or more blade servers,"** contrary to the allegation of the Examiner.

In addition, even assuming arguendo, that Paranchych discloses that the AT 20 and AP 20a are the respective "blade server manager" and "blade server" (Paranchych does not), the Examiner's argument is still deficient. For example, the Examiner equates Paranchych's wireless links between the AT 20 (i.e., the alleged "blade server manager") and AP 20a (i.e., the alleged "blade server") to Applicant's "common backplane", which is known to be a conductive trace on a PC board. In this regard, the Applicant maintains that Paranchych's CDMA wireless network system 10 does not disclose or suggest **"a server including a blade server manager, two or more blade servers, and a common backplane,"** as recited in Applicant's claim 13. Hsu also does not disclose the use of blade servers. Hsu, therefore, does not overcome Paranchych's above deficiencies.

In response, the Examiner (see the Final Office Action in pages 5-6) made extensive allegations that blade servers are used for hosting websites, and for managing load balancing and failover. In addition, the Examiner also alleges that Applicant's claim language is broad. Nevertheless, the Examiner's above arguments and allegations are still moot in view of MPEP, which states:

"The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that **"rejections on obviousness cannot be sustained with**

mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. **If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness."**

See MPEP at § 2142. Since Paranchych and Hsu does not disclose or suggest Applicant's "blade server manager", "blade server" and "a common backplane", the Applicant maintains that the combination of Paranchych and Hsu has not established a *prima facie* case of obviousness, and claim 13 is submitted to be allowable.

In addition to the above arguments regarding claim 13, the Applicant further maintains that Paranchych and Hsu also does not disclose or suggest "said blade server manager **allocates data received** from said external network to each blade server **based on embedded capacity utilization data transmitted by each blade server** to the blade server manager **that is embedded in spare link bandwidth on said interface** between the blade server manager and each of said blade servers," as recited in Applicant's claim 13.

The Examiner relies for support on Hsu's Fig. 2 (See Hsu at col. 6, lines 15-49) and equates Hsu's network switch apparatus 300 to Applicant's "blade server manager" or "blade server", and Hsu's setup message with link utilization limit to Applicant's "receiving capacity utilization information embedded in spare link bandwidth from a plurality of blade servers". The Applicant points out that the Examiner equates Hsu's ATM network system to Applicant's blade server platform. However, Hsu does not disclose the use of any blade server in the entire reference, let alone a blade server manager. In addition, Hsu also does not disclose that the links between the network nodes (i.e., switch apparatus 300) are a common backplane. In this regard, the Applicant maintains that the combination of Paranchych and Hsu does not establish a *prima facie* case of obviousness to reject Applicant's claim 13 (see MPEP 2142).

Nevertheless, even assuming arguendo, that Hsu's **ATM network** is Applicant's **server** (which it is not), the Examiner's argument is still deficient. For example, Hsu discloses that the **link utilization** information limit set at 70 percent of link bandwidth, **pertains to the link itself** (i.e., **does not pertain to the blade server**). In this

regard, Hsu's **link utilization limit information** is not "**capacity utilization data transmitted by each blade server...**," as recited in Applicant's claim 13.

In addition, the Applicant further points out that the Examiner seems to have misconstrued Hsu's "**link utilization limit information**" to **two distinct and separate claim limitations** in Applicant's claim 13. For example, the Examiner initially equated Hsu's "**link utilization limit information**" to Applicant's "**capacity utilization data**" (which pertains to **blade server**). The Examiner then alleges (see Final Office Action at page 8) that Hsu's "**link utilization limit information**" can be Applicant's "**spare link bandwidth in the interface**". In other words, the Examiner seems to have misconstrued Applicant's "**capacity utilization data**" which pertains to **blade server** to be the same as "**spare link bandwidth**", which pertains to **the interface**". Accordingly, the Applicant maintains that the rejection to claim 13 is improper, based on the rationale that the Examiner has misconstrued both of Applicant's above claim limitations to be the same.

Moreover, for the sake of argument, the Applicant also points out that Hsu's "**link utilization limit information**" is not Applicant's "**embedded capacity utilization data... embedded in spare link bandwidth embedded in the interface**". For example, Hsu discloses that (see Hsu at col. 6, lines 40-45) the switch apparatus 300 would not route the traffic to another link with a capacity limit set at 80% bandwidth. In other words, Hsu's capacity limit setting at 80% bandwidth in re-routing, is for avoiding overloading the link traffic beyond 75%. In this regard, Hsu's **keeping an extra 5% margin (the alleged "spare link bandwidth") is merely a link capacity safety margin, which has nothing to do with using the extra 5% margin (the alleged "spare link bandwidth") for carrying the "capacity utilization data" of a blade server as "spare link bandwidth embedded in the interface"**.

Based on the above rationale, the Applicant maintains that Hsu does not disclose or suggest "said blade server manager **allocates data received** from said external network to each blade server **based on embedded capacity utilization data transmitted by each blade server** to the blade server manager **that is embedded in spare link bandwidth on said interface** between the blade server manager and each of said blade servers," as recited in Applicant's claim 13. Therefore, Hsu does not overcome Paranchych's above deficiencies.

Accordingly, the Applicant maintains that the combination of Paranchych and Hsu does not establish a prima facie case of obviousness to reject Applicant's claim 13, and respectfully request that the rejection of claim 13 under 35 U.S.C. § 103(a) be withdrawn. Claim 1 is similar in many respects to the system of claim 13. Therefore, the Applicant submits that claim 1 is allowable at least based on the above reasons.

The Applicant maintains all remaining arguments regarding allowability of the independent and dependent claims 1-25 stated in the 9/28/09 response to Final Office Action.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-25 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: January 4, 2010

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